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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

SARA L. FITZ,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

) Case No. EDCV 12-1806-OP

) MEMORANDUM OPINION AND
) ORDER

The Court¹ now rules as follows with respect to the disputed issue listed in the Joint Stipulation (“JS”).²

I.

DISPUTED ISSUE

As reflected in the Joint Stipulation, the disputed issue raised by Plaintiff as the ground for reversal and/or remand is whether the Administrative Law Judge

¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 8, 9.)

² As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 6 at 3.)

1 (“ALJ”) erred in relying on the testimony of the vocational expert (“VE”) in
 2 finding that Plaintiff could perform her past work as a cashier. (JS at 4.)

3 II.

4 STANDARD OF REVIEW

5 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision
 6 to determine whether the Commissioner’s findings are supported by substantial
 7 evidence and whether the proper legal standards were applied. DeLorme v.
 8 Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more
 9 than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402
 10 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of
 11 Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial
 12 evidence is “such relevant evidence as a reasonable mind might accept as adequate
 13 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The
 14 Court must review the record as a whole and consider adverse as well as
 15 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).
 16 Where evidence is susceptible of more than one rational interpretation, the
 17 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452
 18 (9th Cir. 1984).

19 III.

20 DISCUSSION

21 A. The ALJ’s Findings.

22 The ALJ found that Plaintiff has the severe impairments of muscular
 23 ligamentous strain of the lumbar and cervical spine with no evidence of
 24 radiculopathy or myelopathic symptoms; a disorder of the upper extremity of
 25 unknown etiology with tremors; and headaches. (Administrative Record (“AR”) at
 26 22.)

27 The ALJ found that Plaintiff had the residual functional capacity (“RFC”) to
 28 perform less than a full range of light work with, as relevant here, a preclusion

1 from fine manipulation. (Id. at 24.) Relying on the testimony of the VE, the ALJ
 2 concluded that Plaintiff was capable of performing her past relevant work as a
 3 cashier. (Id. at 29.)

4 **B. There Was Ambiguity Between the ALJ's Findings Regarding**
 5 **Plaintiff's Limitations and Her Ability to Perform Past Relevant Work.**

6 Plaintiff contends that the ALJ erred in determining that she was capable of
 7 performing her past relevant work as a cashier. (JS at 4-6, 9-10.) More
 8 specifically, Plaintiff argues that the ALJ's RFC assessment, which precludes her
 9 from any job requiring "fine manipulation," is inconsistent with the ability to
 10 perform her past relevant work as a cashier because that job requires "frequent
 11 fingering." (Id. at 5.)

12 The ALJ called a VE to testify about what Plaintiff could still do despite her
 13 limitations. (AR at 29, 240-247.) The VE testified that given the ALJ's RFC
 14 assessment, which included a preclusion from "fine manipulation," Plaintiff was
 15 capable of performing her past relevant work as a Cashier II (Dictionary of
 16 Occupational Titles ("DOT") No. 211.462-010). (Id. at 245.)

17 Plaintiff contends that the VE's testimony was inconsistent with the DOT
 18 and the VE never explained the inconsistency. Plaintiff argues that the job of
 19 Cashier II exceeds her limitations because it involves fine manipulation, which she
 20 cannot do based upon her RFC. The Court agrees.

21 According to the DOT, the job of Cashier II requires frequent fingering.
 22 (DOT No. 211.462-010). Courts in this circuit have generally concluded that "fine
 23 manipulation" is equivalent to "fingering" as it is used in the DOT. See, e.g.,
 24 Estrada v. Astrue, No. ED CV 10-1843 PJW, 2011 WL 4946568, at *3 (C.D. Cal.
 25 Oct. 18, 2011) (holding that ALJ's finding that claimant can only perform
 26 "occasional fine manipulation, i.e., occasional fingering, precludes her from
 27 performing a job that requires frequent fingering"); Hyston v. Astrue, No. 3:11-
 28 CV-01173-KI, 2012 WL 5984655, at *7 (D. Or. Nov. 27, 2012) (finding that ALJ

1 erred in relying on VE testimony where VE failed to explain whether claimant
2 “with a limitation in fine manipulation in his dominate hand could perform the
3 frequent fingering required by the job[] of cashier”); see Tich Pham v. Astrue,
4 695 F. Supp. 2d 1027, 1033, n.7 (C.D. Cal. 2010).

5 When an expert’s testimony conflicts with a DOT job listing, the ALJ “must
6 elicit a reasonable explanation for the conflict before relying on the [expert’s]
7 evidence to support a determination or decision about whether the claimant is
8 disabled.” Soc. Sec. Ruling 00-4p, 2002 WL 1898704, at *2. If there is a conflict
9 between the expert’s opinion and the DOT, the ALJ must determine that the expert
10 has a “reasonable explanation for the conflict.” Massachi v. Astrue, 486 F.3d 1149,
11 1153-54 (9th Cir. 2007). An expert’s opinion not supported by the record “has no
12 evidentiary value” and cannot support a benefits determination. Russell v.
13 Sullivan, 930 F.2d 1443, 1445 (9th Cir. 1991), abrogated on other grounds by
14 Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).

15 Here, the VE did not explain the basis for her conclusion that a person with
16 Plaintiff’s preclusion from fine manipulation could perform the job of Cashier II,
17 which requires frequent fingering under the DOT listing. Moreover, the VE did
18 not provide an evidentiary basis for the ALJ to justify a divergence from the DOT
19 listing in this particular case.

20 The VE concluded that Plaintiff could perform the listed job even though her
21 limitations appear to contradict the job’s requirements. This disparity required an
22 explanation from an expert sufficient for the ALJ and the Court to defer to and rely
23 upon. Based on the evidentiary record, the ALJ’s decision that Plaintiff could
24 perform her past relevant work as a Cashier II was not adequately supported by the
25 expert’s opinion. Russell, 930 F.2d at 1445.

26 **C. This Case Should Be Remanded for Further Proceedings.**

27 The law is well established that the decision whether to remand for further
28 proceedings or simply to award benefits is within the discretion of the Court. See,

1 e.g., Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990); McAllister v. Sullivan,
2 888 F.2d 599, 603 (9th Cir. 1989); Lewin v. Schweiker, 654 F.2d 631, 635 (9th
3 Cir. 1981). Remand is warranted where additional administrative proceedings
4 could remedy defects in the decision. Lewin, 654 F.2d at 635.

5 Based on the foregoing, the Court finds that remand is warranted for
6 clarification as to the impact, if any, of Plaintiff's preclusion from fine
7 manipulation on her ability to perform the occupation of Cashier II, and to
8 sufficiently explain any deviation from the DOT, or erosion in the job base as a
9 result of that limitation.

10 **IV.**

11 **ORDER**

12 Based on the foregoing, IT THEREFORE IS ORDERED that the matter is
13 remanded to the Commissioner for further proceedings consistent with this
14 opinion.

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16 Dated: September 4, 2013


17 HONORABLE OSWALD PARADA
United States Magistrate Judge
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